

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7161 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

VASUDEV JAGANATH BABARAM BHATT

Versus

VIBHAGIA NIRAKSHAK (DIVISIONAL INSPECTOR)

Appearance:

MR SATYAJIT SEN for Petitioner

NOTICE SERVED for Respondent No. 1

VM PANCHOLI, AGP, for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/07/1999

ORAL JUDGEMENT

In this petition under Article 226 and 227 of the Constitution the petitioner has challenged the order dated 17th June 1985 passed by the Secretary (Appeals), Government of Gujarat in the Revenue Department (Annexure-B to the petition) dismissing the petitioner's application under section 211 of the Bombay Land Revenue

Code and confirming the order dated 6th February 1995 passed by the Mamlatdar, Chanasma, in Ribbon Control Case No.1 of 1985.

2. The petitioner runs a cabin in the vicinity of Becharaji Temple. According to the petitioner, the petitioner has constructed one room and cabin with the permission of Becharaji Gram Panchayat and the petitioner is regularly paying the rent to the gram panchayat. According to the petitioner, there are many other persons who have also similarly constructed rooms/cabins in the same area and they are running their business in those shops and are paying rent to Becharaji Gram Panchayat. It appears that pursuant to the communication sent by the Taluka Development Officer, Chanasma to Roads & Building Department of the State Government, through the Divisional Inspector, the Mamlatdar, Chanasma, initiated proceedings against the petitioner for following the provisions of Ribbon Development Rules. The Mamlatdar, Chanasma, issued the notice to the petitioner in Ribbon Control Case No.1 of 1985. By his order dated 6.2.1985 the Mamlatdar came to the conclusion that the petitioner had violated the provisions of the Ribbon Development Rules and therefore it was ordered that the said encroachment be removed and the possession of the land in question be handed over to the Divisional Inspector.

The petitioner challenged the said order before the Secretary (Appeals) of the State Government. At the hearing of the said appeal the petitioner relied upon the previous order dated 20.9.1983, passed by the same Secretary in respect of cabins/shops of other persons in the same area and submitted that the land belonged to the gram panchayat and that the land was gamtal land and therefore the Mamlatdar had no jurisdiction to pass the impugned order. The Secretary, however, held that receipt issued by the petitioner pertained to a period in the remote past and that every case was required to be decided on its own facts and circumstances and therefore the previous decision relied upon by the petitioner could not clinch the issue in the petitioner's favour. The Secretary, therefore, dismissed the revision application by his order dated 17th June 1985. It is against the aforesaid order that the petitioner has filed the present Special Civil Application.

3. While issuing the notice on 27th January, 1985 this Court directed the respondents to maintain status quo and the said interim relief was continued on 11.3.1996.

4. At the hearing of this petition, Mr Satyajit Sen, learned counsel for the petitioner, has submitted that the previous judgement of the Secretary rendered on 20.9.1983 pertained to the cabins on the same side of the road in question. He has also relied upon the sketch showing the location of various shops including the shop of Ganeshbhai Manilal Chamar and the shop of Maganlal Prabhuji Barot who were applicants nos.2 and 4 in Revision Application No.592 of 1983, which was decided by the aforesaid judgement dated 20-9-1983. Looking to the said sketch it is clear that the petitioner's shop/cabin is in the same land and is at a distance of 13 meters from the central line of the road whereas the cabin/hotel of Maganlal Prabhuji Barot is at a distance of 12.90 meters and the shop of Ganesh Manilal Chamar is at a distance of 16 meters from the central line of the same road. In all, 9 persons whose cabins were sought to be removed by the Mamlatdar's order and whose shops were between 45/0 to 45/4 on the Becharaji - Modhera - Chanasma State Highway No.7 had challenged the order of Mamlatdar and the Secretary (Appeals) had given a finding that the land in question was a Gamtal land and therefore proceedings could not be initiated under the Ribbon Development Rules. The Secretary (Appeals), however, reserved liberty to the Gram Panchayat and Taluka Panchayat to take appropriate action in accordance with law under the Gujarat Panchayats Act.

It is therefore vehemently submitted by the learned counsel for the petitioner that the Secretary ought to have followed his judgement dated 20.9.1983 in Revision Application No.592 of 1983 (Annexure-C to the petition) in the instant case also.

5 On the other hand, Mr Pancholi, learned AGP, has opposed the petition and submitted that when the petitioner's cabin is at a distance of only 40 ft. from the centre of the road and when the petitioner has not produced any document showing that the petitioner was given tenancy rights or licence by the gram panchayat, the petitioner is an encroacher and therefore the petitioner has no right to continue to occupy the land in question.

6. It appears that both Mamlatdar as well as Secretary did not consider that the petitioner's cabin was in the same line as the cabins of Ganesh Manilal Chamar and Maganlal Prabhuji Barot whose revision application (No.592 of 1983) was granted by the Secretary (Appeals) on the ground that the land was Gamtal land and therefore notice should not be issued under the Ribbon

Development Rules. It further appears from the Secretary's judgement dated 20.9.1993 that there are 400 similar cases in respect of which proceedings are pending before the Mehsana District Panchayat. It therefore appears to the Court that since the petitioner appears to be similarly situated as other cabin holders and the petitioner's cabin is also on the same side of the road and at a similar distance and similar other cases are pending before the Mehsana District Panchayat, there is considerable substance in the submission of the learned counsel for the petitioner that the petitioner cannot be discriminated against, when the Secretary (Appeals) had allowed the revision application of the adjoining cabin holders.

7. This petition is accordingly partly allowed and the impugned order dated 6-2-1985 of the Mamlatdar and the impugned order dated 17-6-1985 of the Secretary (Appeals) are set aside without prejudice to the rights of the Becharaji Gram Panchayat and Mehsana District Panchayat to take appropriate decision and action in accordance with law bearing in mind the observations made in this order.

8. Rule is made absolute to the aforesaid extent with no order as to costs.

(mohd)